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Attorneys for Defendant U.S. Bank Trust National Association,
in its capacity as Indenture Trustee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINISAR CORPORATION, a Delaware
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL
ASSOCIATION, a national banking association,
not in its individual capacity, but solely in its
capacity as Indenture Trustee on behalf of all
Holders of Finisar Corporation's 5¼%
Convertible Subordinated Notes due 2008, 2½%
Convertible Senior Subordinated Notes due 2010,
and 2½% Convertible Subordinated Notes due
2010, and DOES 1 through 10, inclusive,

Defendants.

Case No. C 07-4052 JF (PVT)

**DECLARATION OF DIANA JACOBS
IN SUPPORT OF MOTION OF
U.S. BANK TRUST NATIONAL
ASSOCIATION FOR SUMMARY
JUDGMENT**

Date: July 11, 2008
Time: 9:00 a.m.
Judge: The Hon. Jeremy Fogel
Location: Courtroom No. 3, 5th Fl.

DECLARATION OF DIANA JACOBS

I, Diana Jacobs, declare:

1. I am a Vice President of U.S. Bank Trust National Association. I make this Declaration in support of U.S. Bank's motion for summary judgment ("Motion"). I make this Declaration based upon my personal knowledge. All capitalized terms used in this Declaration and not otherwise defined shall have the meanings given to such terms in U.S. Bank's memorandum of law in support of the Motion.

2. U.S. Bank is the indenture trustee for holders of the following debt securities ("Subordinated Notes"), which were issued by Finisar Corporation ("Finisar"):

(a) 5¼% Convertible Subordinated Notes due October 15, 2008 under that certain Indenture dated as of October 15, 2001 ("2001 Indenture"), in the original principal amount of \$125,000,000. A true and correct copy of the 2001 Indenture is attached to this Declaration as Exhibit 1;

(b) 2½% Convertible Subordinated Notes due October 15, 2010 under that certain Indenture dated as of October 15, 2003 ("2003 Indenture"), in the original principal amount of \$150,000,000. A true and correct copy of the 2003 Indenture is attached to this Declaration as Exhibit 2; and

(c) 2½% Convertible Senior Subordinated Notes due October 15, 2010 under that certain Indenture dated as of October 12, 2006 ("2006 Indenture," together with the 2001 Indenture and 2003 Indenture, the "Indentures"), in the original principal amount of \$100,000,000. A true and correct copy of the 2006 Indenture is attached to this Declaration as Exhibit 3.

3. The current aggregate principal amount outstanding under the 5¼% Convertible Subordinated Notes is \$100,250,000, the 2½% Convertible Subordinated Notes is \$50,000,000, and the 2½% Convertible Senior Subordinated Notes is \$100,000,000.

4. The 5¼% Convertible Subordinated Notes mature on October 15, 2008, and the 2½% Convertible Subordinated Notes and 2½% Convertible Senior Subordinated Notes mature on October 15, 2010, at which time Finisar is obligated to pay all outstanding

1 principal on the Subordinated Notes. Finisar is also obligated to pay semiannual interest on
2 the Subordinated Notes on April 15 and October 15.

3 5. Finisar did not timely file a quarterly report for its second fiscal quarter ended
4 October 29, 2006. Finisar instead filed a Form 12b-25 (a "Notification of Late Filing") with
5 the SEC on December 8, 2006, and subsequently provided a copy of the Notification of Late
6 Filing to U.S. Bank. A true and correct copy of the Notification of Late Filing is attached to
7 this Declaration as Exhibit 4.

8 6. Finisar did not timely file a quarterly report for its third fiscal quarter ended
9 January 28, 2007. Finisar instead filed a Form 12b-25 with the SEC on March 16, 2007, and
10 subsequently provided a copy of the Notification of Late Filing to U.S. Bank. A true and
11 correct copy of the Notification of Late Filing is attached to this Declaration as Exhibit 5.

12 7. Finisar did not timely file an annual report for its fiscal year ended April 30,
13 2007. Finisar instead filed a Form 12b-25 with the SEC on June 29, 2007, and subsequently
14 provided a copy of the Notification of Late Filing to U.S. Bank. A true and correct copy of
15 the Notification of Late Filing is attached to this Declaration as Exhibit 6.

16 8. Finisar did not timely file a quarterly report for its third fiscal quarter ended
17 July 29, 2007. Finisar instead filed a Form 12b-25 with the SEC on September 11, 2007, and
18 subsequently provided a copy of the Notification of Late Filing to U.S. Bank. A true and
19 correct copy of the Notification of Late Filing is attached to this Declaration as Exhibit 7.

20 9. U.S. Bank sent three "Notices of Default" to Finisar, one under each
21 Indenture, on January 4, 2007, as a result of the company's failure to file its second quarterly
22 report. That Default ripened into an "Event of Default" under each Indenture on March 5,
23 2007, which date was 60 days after U.S. Bank delivered the Notices of Default to Finisar.
24 True and correct copies of the Notices of Default are attached as Exhibit 8.

25 10. U.S. Bank sent three additional Notices of Default to Finisar, one under each
26 Indenture, on April 23, 2007, as a result of the company's failure to file its third quarterly
27 report. That Default ripened into an Event of Default under each Indenture on June 23,
28

1 2007, which date was 60 days after U.S. Bank delivered the Notices of Default to Finisar.

2 True and correct copies of the Notices of Default are attached as Exhibit 9.

3 11. U.S. Bank sent three additional Notices of Default to Finisar, one under each
4 Indenture, on July 16, 2007, as a result of the company's failure to file its annual report for
5 fiscal year 2007. That Default ripened into an Event of Default under each Indenture on
6 September 14, 2007, which date was 60 days after U.S. Bank delivered the Notices of
7 Default to Finisar. True and correct copies of the Notices of Default are attached as
8 Exhibit 10.

9 12. To date, neither the Trustee nor noteholders have acted to accelerate any
10 series of the Subordinated Notes.

11 13. On December 4, 2007, Finisar filed its delayed reports with the SEC and also
12 delivered copies of those reports to U.S. Bank, including:

- 13 (a) Finisar's Form 10-Q for its second fiscal quarter ended October 29, 2006, a
14 true and correct copy of which is attached to this Declaration as Exhibit 11;
15 (b) Finisar's Form 10-Q for its third fiscal quarter ended January 28, 2007, a true
16 and correct copy of which is attached to this Declaration as Exhibit 12;
17 (c) Finisar's Form 10-K for its fiscal year ended April 30, 2007, a true and correct
18 copy of which is attached to this Declaration as Exhibit 13; and
19 (d) Finisar's Form 10-Q for its first fiscal quarter ended July 29, 2007, a true and
20 correct copy of which is attached to this Declaration as Exhibit 14.

21 14. Prior to December 4, 2007, Finisar had not filed quarterly and annual reports
22 with the SEC pursuant to Sections 13 and 15(d) or provided equivalent financial information
23 to the Trustee or the noteholders since September 8, 2006, when Finisar filed its first
24 quarterly report for the period ended July 31, 2006.

25 15. Prior to filing its delayed reports, Finisar filed numerous Forms 8-K ("current
26 reports") with the SEC and also delivered copies of those reports to U.S. Bank. A list of the
27 filings made by Finisar from September 8, 2006 through December 4, 2007 is attached to this
28 Declaration as Exhibit 15.

1 16. From September 8, 2006 through December 4, 2007, Finisar filed five Form
2 8-K's that included financial information:

3 (a) Finisar's Form 8-K dated November 28, 2006, a true and correct copy of
4 which is attached to this Declaration as Exhibit 16;

5 (b) Finisar's Form 8-K dated March 5, 2007, a true and correct copy of which is
6 attached to this Declaration as Exhibit 17;

7 (c) Finisar's Form 8-K dated May 9, 2007, a true and correct copy of which is
8 attached to this Declaration as Exhibit 18;

9 (d) Finisar's Form 8-K dated June 12, 2007, a true and correct copy of which is
10 attached to this Declaration as Exhibit 19; and

11 (e) Finisar's Form 8-K dated September 4, 2007, a true and correct copy of which
12 is attached to this Declaration as Exhibit 20.

13
14 17. Finisar filed certain additional current reports with the SEC as a result of
15 receiving staff determination notices from NASDAQ concerning its failures to timely file its
16 financial statements, including:

17 (a) Finisar's Form 8-K dated March 15, 2007, a true and correct copy of which is
18 attached to this Declaration as Exhibit 21.

19 (b) Finisar's Form 8-K dated July 9, 2007, a true and correct copy of which is
20 attached to this Declaration as Exhibit 22.

21 (c) Finisar's Form 8-K dated September 14, 2007, a true and correct copy of
22 which is attached to this Declaration as Exhibit 23.

23
24 18. Attached as Exhibit 24 is a true and correct copy of the Order Granting
25 Defendants' Motions to Dismiss in the stock option derivative litigation.

26 19. Attached as Exhibit 25 is a true and correct copy of the parties' stipulation and
27 order revising the briefing schedule in the stock option derivative litigation.
28

1 20. Twice in 2007, U.S. Bank remitted invoices to Finisar for payment of its fees
2 and expenses. Finisar's counsel subsequently requested additional copies of those same
3 invoices, which were provided on December 17 and 19, 2007. True and correct copies of the
4 emails pursuant to which the invoices were provided to Finisar's counsel are attached to this
5 Declaration as Exhibit 26. On January 8, 2008, Finisar's counsel requested additional
6 information from U.S. Bank regarding the invoices. A true and correct copy of counsel's
7 letter is attached to this Declaration as Exhibit 27.

8 21. U.S. Bank provided additional information regarding its invoices to Finisar by
9 letter dated January 16, 2008, a true and correct copy of which, excluding the redacted
10 invoices, is attached to this Declaration as Exhibit 28. U.S. Bank also provided copies of the
11 indenture trustee's fee schedules to Finisar, which had previously been given to Finisar upon
12 issuance of the Subordinated Notes in 2001, 2003, and 2006. True and correct copies of the
13 fee schedules are attached to this Declaration as Exhibit 29.

14 22. Prior to commencement of this Action, Finisar had paid all of U.S. Bank's
15 fees and expenses in compliance with the fee schedules and Section 7.06 of the Indentures.

16 23. Finisar did not pay the invoices submitted by U.S. Bank. Accordingly, on
17 January 2, 2008, U.S. Bank sent a Notice of Default to Finisar in accordance with Section
18 6.01 of the Indentures. A true and correct copy of the Notice of Default is attached to this
19 Declaration as Exhibit 30. That Default would have ripened into an additional Event of
20 Default under each Indenture within sixty days of the Notice of Default (on March 2, 2008).

21 24. Through March 31, 2008, U.S. Bank's fees and expenses totaled
22 approximately \$588,130.50. The fees and expenses include annual and default
23 administration fees due to the indenture trustee and the fees and expenses of U.S. Bank's
24 counsel arising from and relating to the Events of Default. Finisar paid U.S. Bank's fees and
25 expenses through November 30, 2007 on February 20, 2008, in the amount of \$317,817.58
26 under protest. A true and correct copy of
27
28

1 Finisar's letter stating that it paid the fees and expenses under protest is attached hereto as
2 Exhibit 31. Finisar has not subsequently paid any of U.S. Bank's fees and expenses.

3 25. Attached as Exhibit 32 is a true and correct copy of Finisar's initial complaint,
4 filed with the State Court on June 22, 2007.

5 26. Attached as Exhibit 33 is a true and correct copy of Finisar's amended
6 complaint, filed with this Court on March 19, 2008.

7 27. Attached as Exhibit 34 is a true and correct copy of this Court's order denying
8 Finisar's motion to remand dated December 7, 2007.

9 28. Attached as Exhibit 35 is a true and correct copy of Finisar's complaint in the
10 First Declaratory Judgment Action.

11 29. Attached as Exhibit 36 is a true and correct copy of the State Court's notice of
12 further case management conference.

13 30. Attached as Exhibit 37 is a true and correct copy of the excerpts of the
14 Prospectus dated January 18, 2002, for the 5 ¼% Convertible Subordinated Notes due 2008,
15 and the Prospectus dated August 12, 2005, for the 2 ½% Convertible Subordinated Notes due
16 2010.

17 31. Attached as Exhibit 38 is a true and correct copy of U.S. Bank's Answer to
18 Finisar's Amended Complaint dated April 18, 2008.

19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct.

21 Executed this 24th day of April, 2008, at Seattle, Washington.

22
23
24 _____
Diana Jacobs